

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lauren Goldapper	Team: Team # 6	CCRB Case #: 201116518	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/21/2011 12:08 AM	Location of Incident: Lexington Avenue and East 86th Street	Precinct: 19	18 Mo. SOL 6/21/2013	EO SOL 6/21/2013	
Date/Time CV Reported Wed, 12/21/2011 12:41 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/28/2011 11:01 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Christopher Schmidt	00000	907284	PBMN TF

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Cordones	13491	944463	PBMN TF

Officer(s)	Allegation	Investigator Recommendation
A.LT Christopher Schmidt	Force: Lt. Christopher Schmidt used pepper spray against § 87(2)(b)	
B.LT Christopher Schmidt	Force: Lt. Christopher Schmidt used physical force against § 87(2)(b)	

Case Summary

On December 21, 2011, § 87(2)(b) filed a complaint by phone with the IAB Command Center (IAB Log #11-59433) (encl. 4), which was received by the CCRB on December 28, 2011 (encl. 5). On December 21, 2011, at 12:08 a.m., in the vicinity of Lexington Avenue and East 86th Street, in Manhattan, § 87(2)(b) was arrested by Lt. Christopher Schmidt and the following allegations resulted:

- **Allegation A – Force: Lt. Christopher Schmidt used pepper spray against**

§ 87(2)(b)

§ 87(2)(g)

- **Allegation B – Force: Lt. Christopher Schmidt used physical force against**

§ 87(2)(b)

§ 87(2)(g)

Results of Investigation

Civilian Statements

Complainant/Witness: § 87(2) § 87(2)(b)

- § 87(2)(b) was a § 87(2)(b) white male at the time of incident, who is 5'9" tall, weighs 150 pounds, and has brown hair and brown eyes. § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b)

Statements to IAB and CCRB

§ 87(2)(b) filed his complaint with the IAB Command Center on December 21, 2011 (encl. 4), and was interviewed at the CCRB on February 7, 2012 (encl. 6). § 87(2)(g)

On December 21, 2011, at approximately 12:08 a.m., § 87(2)(b) was in the vicinity of Lexington Avenue and East 86th Street, in Manhattan, with his two friends, § 87(2)(b) and § 87(2)(b) when they came upon an intoxicated male, identified through the investigation as § 87(2)(b) who repeatedly ran into the middle of the street. § 87(2)(b) and his friends tried to control § 87(2)(b) and were able to get § 87(2)(b) to remain outside of a storefront. § 87(2)(b) was speaking in both English and Spanish, was crying, and saying, "Now I can die." § 87(2)(b) called 911 and requested an ambulance to help § 87(2)(b). As § 87(2)(b) and his friends remained at the scene and waited for the ambulance, Lt. Christopher Schmidt from Manhattan North Task Force, who was by himself, arrived on scene. § 87(2)(b) identified Lt. Schmidt by name and described him as a 30 to 35-year-old white male, who was 6'3" tall and was wearing a white uniform shirt. After § 87(2)(b) approached Lt. Schmidt and told him his concerns about § 87(2)(b) Lt. Schmidt left and approached § 87(2)(b) who at this time was on the ground on his knees. § 87(2)(b) was approximately 10 to 15 feet away from § 87(2)(b) and Lt. Schmidt at this time. Lt. Schmidt did not give § 87(2)(b) any directives. Lt. Schmidt picked § 87(2)(b) up off the ground and then pepper-sprayed him. § 87(2)(b) did not react to the pepper-spray and was not aware of what was happening to him. Lt. Schmidt then threw § 87(2)(b) to the ground and handcuffed him. As a result of § 87(2)(b) being brought to the ground, § 87(2)(b) was bleeding as he had cut himself on the subway grates. After § 87(2)(b) was handcuffed, five additional officers and an ambulance arrived on

scene. § 87(2)(b) was placed in the ambulance.

§ 87(2)(b) said that he was with § 87(2)(b) for approximately twenty minutes prior to the arrival of Lt. Schmidt, and at no point did § 87(2)(b) kick or make any threatening statements to any females.

§ 87(2)(b) said that a male named § 87(2)(b) from his school was also at the scene. However, § 87(2)(b) was unable to provide contact information for § 87(2)(b) or his friend, § 87(2)(b).

Victim: § 87(2)(b) § 87(2)(b)

- § 87(2)(b)'s arrest paperwork reflects that at the time of incident, § 87(2)(b) was a § 87(2)(b) white Hispanic male, who is 5'10" tall, weighs 180 pounds, and has brown hair and brown eyes.

Statements to IAB

On December 21, 2011, § 87(2)(b) was interviewed by investigating officers as part of an IAB call-out (encl. 7). On December 21, 2011, at approximately 12:08 a.m., § 87(2)(b) was highly intoxicated and he tripped and fell on the sidewalk, striking his face on the ground. § 87(2)(b) reported that the police were near him but had no physical contact with him prior to him tripping and falling. § 87(2)(b) denied having any altercation with any civilians or the police and said the police were there to help him. As a result of tripping and landing on his face, § 87(2)(b) sustained several abrasions and lacerations to his face, with a laceration on his left cheek requiring an unknown number of stitches. § 87(2)(b) was transported to an unknown hospital, where he received treatment for his abrasions and the laceration. § 87(2)(b) did not mention that he was pepper-sprayed, and the IAB report reflected that § 87(2)(b) was not making any allegations of police misconduct.

IAB Photo and Arrest Photo

Photos taken by IAB investigating officers, which were forwarded to the CCRB as black and white copies, and § 87(2)(b)'s arrest photo were generally consistent (encl. 7C-7D) (encl. 8). The photos reflected that § 87(2)(b) had visible abrasions or lacerations on the left side of his face, specifically above his left eyebrow and below the left side of his lip. Bandages were covering the bridge of § 87(2)(b)'s nose and left cheekbone. § 87(2)(b)'s eyes were bloodshot and he had blood on his shirt.

Attempts to Contact § 87(2)(b)

Between December 29, 2011, and May 23, 2012, the undersigned made various attempts to locate § 87(2)(b). Neither the IAB log nor related arrest report contained an address or phone number for § 87(2)(b) and reflected that § 87(2)(b) § 87(2)(b). According to § 87(2)(b) § 87(2)(b) of the Department of Homeless Services, there was no record of § 87(2)(b) in their database. A search in Lexis Nexis located one address, and two letters were sent to that address on December 30, 2011, and January 10, 2012. None of the letters mailed to § 87(2)(b) were returned from the US Post Office. A search in Lexis Nexis did not locate a phone number for § 87(2)(b). A search in the DOC database reflected that § 87(2)(b) was not incarcerated. The undersigned made several attempts to locate contact information for § 87(2)(b) through his criminal defense attorney, § 87(2)(b) § 87(2)(b), but ultimately, § 87(2)(b) § 87(2)(b) did not provide the CCRB with § 87(2)(b)'s contact information. To date, § 87(2)(b) has not responded to the CCRB's attempts to reach him by mail. As a result, § 87(2)(b) was not interviewed by the CCRB.

Witness: § 87(2) § 87(2)(b)

- § 87(2)(b) was identified from the communication records as being one of the 911 callers for this incident.

Statements

§ 87(2)(b) made her first statement about this incident when she called 911 on December 21, 2011 (encl. 9). Communication records reflected that § 87(2)(b) called 911 and reported that § 87(2)(b) was highly intoxicated and was harassing people at the location.

On March 21, 2013, § 87(2)(b) provided the CCRB with a brief phone statement (encl. 9). On December 21, 2011, at approximately 12:08 a.m., in the vicinity of Lexington Avenue and East 86th Street, in Manhattan, § 87(2)(b) observed § 87(2)(b) who was visibly intoxicated, making a lot of noise and trying to attack a female. Several people held § 87(2)(b) back and tried to calm him down. § 87(2)(b) called 911 and requested an ambulance so § 87(2)(b) could be detoxed. As § 87(2)(b) waited for the ambulance to respond, § 87(2)(b) got on the ground and started praying and saying, “God help me.” § 87(2)(b) indicated that multiple officers responded. She described them as white males dressed in uniform but could not provide further details regarding their description. The officers ordered § 87(2)(b) to get up off the ground. When § 87(2)(b) tried to get off the ground, one of the officers pepper-sprayed § 87(2)(b) and then one of the officers grabbed § 87(2)(b) from behind and slammed him down to the ground. § 87(2)(b) sustained a laceration to his forehead as a result.

Witness: § 87(2) § 87(2)(b)

- § 87(2)(b) was identified from the complaint report related to this incident that listed him as a witness.

Complaint Report

The complaint report (encl. 13A-13B) reflects that on the date and time of occurrence, § 87(2)(b) observed § 87(2)(b) verbally threaten and try to kick an elderly female. One female was forced to run into moving traffic and jump into a cab to avoid being hit by § 87(2)(b).

The complaint report did not contain a phone number for § 87(2)(b). On August 10, 2012, the CCRB sent one letter to § 87(2)(b) which was subsequently returned from the US Postal Service as “attempted/not known.” A search in Lexis Nexis was negative for additional contact information for § 87(2)(b). As a result, § 87(2)(b) was not interviewed by the CCRB.

Additional Statements to 911

On December 21, 2011, two additional individuals called 911 to report this incident (encl. 15). Both callers reported that § 87(2)(b) was kicking and fighting with people at the scene. Attempts to contact them have been summarized below.

Attempts to Contact Civilians

Between August 10, 2012, and October 1, 2012, the undersigned placed three calls to § 87(2)(b) leaving detailed voicemails on two occasions and making contact with him on one occasion. A search in Lexis Nexis was negative for an address for § 87(2)(b). On October 1, 2012, the undersigned spoke to § 87(2)(b) who was unable to talk at that time and said he would call the undersigned back. To date, § 87(2)(b) has not contacted the undersigned and was not interviewed as a result.

§ 87(2)(b) was unable to provide contact information for § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) and a search in Lexis Nexis did not locate any contact information for them. As a result, neither § 87(2)(b) nor § 87(2)(b) were interviewed by the CCRB.

Between January 10, 2012, and March 19, 2013, the CCRB sent two letters to the 911 caller with ani-ali § 87(2)(b) but the letters were returned from the US Postal Service, and a call placed on March 19, 2013, reflected that the number was “incorrect.” As a result, the 911 caller was not interviewed by the CCRB.

Between February 12, 2013, and March 21, 2013, the CCRB sent two letters and placed two calls to the 911 caller with ani-ali § 87(2)(b), making contact on both occasions. The caller did not want to provide identifying information for themselves and on both phone contacts was unable to talk and agreed to call the undersigned back. However, to date, this 911 caller did not contact the undersigned, and as a result, was not interviewed by the CCRB.

NYPD Statements:

Subject Officer: LT. CHRISTOPHER SCHMIDT

- *Lt. Schmidt was a § 87(2)(b)-old white male on the date of incident. He is 6’0” tall, weighs 210 pounds, and has brown hair and blue/green eyes.*
- *Lt. Schmidt worked from 6:00 p.m. on December 20, 2011, to 2:35 a.m. on December 21, 2011, and was dressed in uniform. Lt. Schmidt was assigned to work as the Task Force Platoon Commander and worked with PO Regina Vasquez and PO Christopher Mulvey. They were assigned to an unmarked vehicle, § 87(2)(b).*

Memo Book

Lt. Schmidt’s memo book (encl. 10) reflects that on December 20, 2011, at 11:59 p.m. there was an assault at East 86th Street and Lexington Avenue, in Manhattan. On December 21, 2011, at 12:08 p.m., one male, § 87(2)(b) was arrested and physically subdued by Lt. Schmidt at Lexington Avenue between East 85th Street and East 86th Street. § 87(2)(b) suffered cuts/gash to his forehead when Lt. Schmidt took him to the ground to arrest him. § 87(2)(b) s forehead hit the Lexington Avenue subway grates. EMS was called and § 87(2)(b) was transported to § 87(2)(b). Witness § 87(2)(b) pointed § 87(2)(b) out to Lt. Schmidt and Lt. Schmidt approached § 87(2)(b) by himself. § 87(2)(b) said that § 87(2)(b) was acting crazy, trying to punch people and kick a female, who ran into a cab to get away. Lt. Schmidt assigned the arrest to PO Joseph Cordones.

CCRB Statement

Lt. Schmidt was interviewed at the CCRB on April 23, 2013 (encl. 11). On December 21, 2011, at approximately 12:00 a.m., Lt. Schmidt was by himself on meal at a diner on 2nd Avenue between East 88th Street and East 89th Street, when there were two radio calls regarding a female being assaulted at Lexington Avenue and East 86th Street, in Manhattan. Lt. Schmidt responded to the scene by himself. PO Vasquez and PO Mulvey were not present and there were no other officers on scene.

Upon his arrival at East 86th Street and Lexington Avenue, in Manhattan, Lt. Schmidt was met by a male, § 87(2)(b) who pointed to § 87(2)(b) who was standing by a Hot and Crusty store at the corner of that location. § 87(2)(b) was very excited and said that § 87(2)(b) was kicking at females and people were running into a cab to get away from him. Lt. Schmidt was by himself when he approached § 87(2)(b) with the intention of arresting him for attempted assault and menacing. § 87(2)(b) was standing on his feet in front of the store when he approached him. Lt. Schmidt did not remember if § 87(2)(b) was saying anything. Lt. Schmidt acknowledged that other people were in the area, but Lt. Schmidt did not see any

individuals interact with § 87(2)(b). Lt. Schmidt assumed he told § 87(2)(b) to put his hands behind his back when he approached him, but did not remember the specific conversation he had with § 87(2)(b) or other specific directives he had given him. Lt. Schmidt went to arrest § 87(2)(b) and when he used two hands to grab on to § 87(2)(b)'s shirt, § 87(2)(b) was non-compliant and tried to pull away. Lt. Schmidt took a step back while holding § 87(2)(b) and spun and twisted § 87(2)(b) until he was down to the ground. § 87(2)(b)'s forehead hit the subway grate when he went down to the ground and resulted in § 87(2)(b) busting his forehead open. Lt. Schmidt got on top of § 87(2)(b) and handcuffed him.

Lt. Schmidt did not have an independent recollection of whether or not he pepper-sprayed § 87(2)(b). Lt. Schmidt reviewed the corresponding arrest report and stated that the arrest report reflected that physical force was used in order to restrain/control and that the report did not reflect that a chemical agent was used. However, Lt. Schmidt stated that the online arrest reports only let you check one option, and acknowledged that the fact that the report did not reflect that pepper-spray was used did not mean that pepper-spray was not in fact used. Lt. Schmidt did not have an independent recollection of whether or not he used pepper-spray and reviewing the arrest report did not refresh his recollection.

Lt. Schmidt did not remember if § 87(2)(b) was intoxicated. Lt. Schmidt's interaction with § 87(2)(b) lasted 20 to 30 seconds. No other officers were present when Lt. Schmidt was interacting with § 87(2)(b) and would not have witnessed Lt. Schmidt's interaction with § 87(2)(b). Additional units, which included PO Joseph Cordones and officers from the 19th Precinct, including a sergeant from the 19th Precinct, whose name Lt. Schmidt did not know, arrived after § 87(2)(b) effected § 87(2)(b)'s arrest. Lt. Schmidt directed PO Cordones to take § 87(2)(b)'s arrest.

An ambulance was called for § 87(2)(b). Lt. Schmidt did not remember if he or another officer called for the ambulance.

During the incident, people in the crowd were making comments to Lt. Schmidt about how he handled the situation and commented about how § 87(2)(b) was bleeding and were questioning why Lt. Schmidt brought § 87(2)(b) down to the ground. It appeared to Lt. Schmidt that some of these individuals did not even witness the incident or witness § 87(2)(b)'s actions leading up to his arrest.

After everything was under control, Lt. Schmidt obtained § 87(2)(b)'s contact information. Lt. Schmidt did not learn the contact information for the females who were allegedly assaulted. Lt. Schmidt did not observe § 87(2)(b) attack anyone or get physical with anyone.

Witness Officer: PO JOSEPH CORDONES

- PO Cordones was a § 87(2)(b)-old Hispanic male at the time of incident, who is 6'0" tall, weighs 230 pounds, and has black hair and black eyes.
- PO Cordones worked from 5:30 p.m. on December 20, 2011, to 8:05 a.m. on December 21, 2011, and was dressed in uniform. PO Cordones worked as the sergeant operator and worked with Sgt. Felix Rosario and PO Jorge Caprio. PO Cordones was assigned to an unmarked black vehicle, vehicle § 87(2)(b).

Memo Book

PO Cordones' memo book (encl. 12) reflects that on December 21, 2011, at § 87(2)(b) there was one arrest given to him by Lt. Schmidt for assault. When PO Cordones got to the scene at 86th Street and Lexington Avenue, in Manhattan, the defendant, § 87(2)(b) was already in the ambulance and PO Cordones was told to follow the ambulance to the hospital. At the hospital, PO Cordones was told by Lt. Schmidt that the defendant was assaulting and kicking

every person that was passing by, and chased a § 87(2)(b) woman. PO Cordones was also told by a complainant the next day over the telephone that the defendant was pushing pedestrians uptown into oncoming traffic.

Complaint and Arrest Report

The complaint report and arrest report (encl. 13) reflects that on the date and time of occurrence, § 87(2)(b) was observed verbally threatening and trying to kick an elderly female and that one female was forced to run into moving traffic and jump into a cab to avoid being hit by § 87(2)(b). § 87(2)(b) was charged § 87(2)(b), § 87(2)(b). § 87(2)(b)'s physical condition was listed as intoxicated. The report reflects that force was used. The type used was physical force and the reason reflected was to restrain/control/remove.

CCRB Statement

PO Cordones was interviewed at the CCRB on April 11, 2013 (encl. 14). On the date and time of incident, PO Cordones responded to the scene and acknowledged that he responded with Sgt. Rosario and PO Caprio, as per his memo book. He did not see any officers interacting with § 87(2)(b) and referred to his memobook which reflected that § 87(2)(b) was already in the ambulance upon his arrival on scene. PO Cordones described § 87(2)(b) as intoxicated, which medical personnel confirmed. § 87(2)(b) could barely speak and had a strong smell of alcohol. PO Cordones processed § 87(2)(b)'s arrest and took § 87(2)(b)'s arrest photo. PO Cordones did not know how § 87(2)(b) sustained any of the injuries that were reflected in § 87(2)(b)'s arrest photo.

Additional Statements/Reports

IAB Log

IAB Log #11-59026 (encl. 19A-19C) was generated as a result of a call to IAB to report § 87(2)(b)'s injuries. The reporter was identified as Lt. John Coates from Manhattan North Task Force. On December 21, 2011, Lt. Coates reported that Lt. Schmidt and PO Cordones responded to the location where § 87(2)(b) was highly intoxicated and was kicking elderly females. Lt. Schmidt grabbed § 87(2)(b) and they both fell to the ground, where § 87(2)(b) hit his face on the subway grate sustaining an injury to his cheek. § 87(2)(b) was placed under arrest and taken to § 87(2)(b) where he was treated for a laceration to his cheek (9 stitches) and released. The IAB log does not mention any thing about Lt. Schmidt pepper-spraying § 87(2)(b) or § 87(2)(b) being treated for the effects of the pepper-spray. A call-out was recommended. The results of IAB's call-out are summarized below, in the NYPD document section.

NYPD Documents

Communication Records

The SPRINT reports (encl. 15) related to this incident reflect that there were three 911 callers reporting that § 87(2)(b) was intoxicated and was fighting and harassing people at the scene. Multiple units from Manhattan task force and the 19th Precinct made radio transmissions in regards to this incident. A unit from the task force communicated that § 87(2)(b) was an EDP. An ambulance responded to the scene.

Summary of IAB Investigative Findings

§ 87(2)(g)

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- As of May 17, 2013, the Notice of Claim inquiry submitted on May 14, 2013, has not been returned from the Comptroller.

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) and the first complaint involving § 87(2)(b) (encl. 3).

Subject Officer CCRB History

- Lt. Schmidt has been a member of the service for nineteen years and there are two substantiated CCRB allegations against him (encl. 2).
 - In CCRB 200202279, Lt. Schmidt was substantiated for an allegation of a question and/or stop and an allegation of a frisk and/or search. The board recommended charges for both allegations. In August of 2003, the NYPD issued Lt. Schmidt Command Discipline-B.

Conclusion

Identification of Subject Officers

Lt. Schmidt acknowledged that he interacted with § 87(2)(b) and effected § 87(2)(b)'s arrest while working alone. § 87(2)(g).

Investigative Findings and Recommendations

Allegation A – Force: Lt. Christopher Schmidt used pepper spray against § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) and § 87(2)(b) alleged that § 87(2)(b) was pepper-sprayed. § 87(2)(b) said that Lt. Schmidt pepper-sprayed § 87(2)(b) but § 87(2)(b) did not react. Lt. Schmidt did not remember whether or not he pepper-sprayed § 87(2)(b). When § 87(2)(b) made a statement to IAB investigating officers he did not allege he was pepper-sprayed. Lt. Schmidt did not remember this incident in great detail. Lt. Schmidt did not remember whether or not he pepper-sprayed § 87(2)(b). § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that he was with § 87(2)(b) for twenty minutes prior to his arrest and § 87(2)(b) did not threaten anyone and also said that Lt. Schmidt did not give § 87(2)(b) any directives when he approached him. § 87(2)(b), § 87(2)(g)

Allegation B – Force: Lt. Christopher Schmidt used physical force against § 87(2)(b)

§ 87(2)(b) § 87(2)(b) alleged that Lt. Schmidt picked up § 87(2)(b) and threw him to the ground. It is undisputed that Lt. Schmidt initiated physical contact with § 87(2)(b) to effect his arrest and then brought § 87(2)(b) down to the ground, resulting in § 87(2)(b) making contact with the subway grate and sustaining lacerations and abrasions to his face. § 87(2)(g)

Patrol Guide Section 203-11 (encl. 1) permits officers to use the amount of force necessary to overcome resistance and effect an arrest. § 87(2)(g)

Team: 6

:

Investigator: _____ Lauren Goldapper _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

